



# Iowa General Assembly

## 2014 Committee Briefings

Legislative Services Agency – Legal Services Division

<https://www.legis.iowa.gov/committees/committee?endYear=2014&groupID=705>

### ADMINISTRATIVE RULES REVIEW COMMITTEE

**Meeting Dates:** [January 6, 2015](#) | [December 12, 2014](#) | [November 18, 2014](#) | [October 14, 2014](#)  
[September 9, 2014](#) | [August 5, 2014](#) | [July 8, 2014](#) | [June 10, 2014](#) | [May 13, 2014](#)

**Purpose.** This compilation of briefings on legislative interim committee meetings and other meetings and topics of interest to the Iowa General Assembly, written by the Legal Services Division staff of the nonpartisan Legislative Services Agency, describes committee activities or topics. The briefings were originally distributed in the Iowa Legislative Interim Calendar and Briefing. Official minutes, reports, and other detailed information concerning the committee or topic addressed by a briefing can be obtained from the committee's Internet page listed above, from the Iowa General Assembly's Internet page at <https://www.legis.iowa.gov/>, or from the agency connected with the meeting or topic described.

### ADMINISTRATIVE RULES REVIEW COMMITTEE

January 6, 2015

**Chairperson:** Senator Wally Horn

**Vice Chairperson:** Representative Dawn Pettengill

### DENTAL BOARD, *Dental Assistants*, SPECIAL REVIEW

**Background.** A committee member received concerns from a member of the public regarding a potential change in interpretation of one of the Dental Board's existing rules. The committee member requested a spokesperson attend the meeting and address the issue. The rule relates to the types of activities that may and may not be performed by a dental assistant; notably, a dental assistant cannot place sealants without a dentist's supervision.

The issue arose when a member of the Department of Public Health (DPH) attended the October 2014 meeting of the Dental Board and subsequently summarized in a letter what he perceived as a change in rule interpretation that would essentially cost dental assistants who work in public health settings their jobs.

**Commentary.** The Dental Board representative explained that the statement from the DPH member in his letter was incorrect and that no rules had been reinterpreted. He explained that the issue revolves around the scopes of practices for dental assistants in comparison with dental hygienists. An individual representing dental hygienists expressed concern with being governed by the Dental Board rather than their own board. The president of the Iowa Dental Association expressed approval of hygienists being able to employ assistants. The Dental Board representative indicated the board will be considering a modification to the rule at issue in the near future.

**Action.** No action taken.

### ECONOMIC DEVELOPMENT AUTHORITY, *Workforce Housing Tax Incentives Program; High Quality Jobs Program; Enterprise Zone Program; Wage Thresholds and Local Match*, 12/24/14 IAB, ARC 1801C, ADOPTED.

**Background.** Pursuant to 2014 Iowa Acts, HF 2448, this rulemaking establishes a new tax incentives program for assisting in the development of workforce housing and describes the manner in which the authority intends to implement and administer the program. The rulemaking also makes amendments to the High Quality Jobs Program and the Enterprise Zone Program.

**Commentary.** Discussion centered on 261 IAC 48.7(2), which permits the authority to reallocate unused funds for the workforce housing tax incentives program to other programs under Iowa Code section 15.119, if funds allocated for the program exceed demand. Committee members questioned whether the reallocation of unused funds from one tax credit program to another, or the receiving program's use of more funds than originally allocated to it, is permitted by statute or in keeping with legislative intent for these programs. An authority representative stated that such reallocations are permitted by Iowa Code section 15.119 and are in keeping with legislative intent that funds for these programs be used in

an efficient manner rather than going unused. Committee members voted to delay the effective date of this filing until the adjournment of the 2015 Legislative Session. The filing will automatically go into effect upon adjournment if the General Assembly does not take action relating to it.

**Action.** Session delay.

**INSURANCE DIVISION, *Prior Authorization—Prescription Drug Benefits*, 12/10/14 IAB, ARC 1772C, NOTICE.**

**Background.** The proposed rules describe the requirements for prior authorization for prescription drug benefits. The Commissioner of Insurance is required to adopt rules to provide for a single prior authorization form and prior authorization process for approval of prescription drug benefits by health carriers and pharmacy benefits managers.

**Commentary.** The Insurance Division representative indicated she had received 40 written comments and seven phone calls in response to this noticed rule. The major point of contention regarding the rule is the portion detailing the time frames allowed for types of claims. The rule as written permits the division 72 hours to respond to an urgent claim and 15 days for nonurgent claims. The time frames included in the bill that passed the 2014 Legislative Session were item vetoed by the Governor. The division selected the time frames to maintain consistency with certain federal requirements. Various consumer groups advocated for 24-hour and 72-hour time frames for urgent and nonurgent claims, respectively, asserting that shorter time frames would better serve consumers. Insurance industry representatives expressed approval of the rule as drafted, asserting that it would be problematic for the industry to be subject to differing state and federal standards in this area.

**Action.** No action taken.

**MEDICINE BOARD, *Standards of Practice—Telemedicine*, 12/10/14 IAB, ARC 1769C, NOTICE.**

**Background.** This proposed rule would establish standards of practice for medical physicians and osteopathic physicians who use telemedicine, which is the practice of medicine using electronic communication, information technology, or other means of interaction between a licensee in one location and a patient in another location with or without an intervening health care provider. The standards require physicians using telemedicine to have an active Iowa medical license and utilize evidence-based telemedicine practice guidelines if available. The rule also includes requirements relating to standards of care and professional ethics, the physician-patient relationship, medical history and physical examination, nonphysician health care providers, follow-up care, emergency services, medical records, privacy and security, and technology and equipment.

**Commentary.** A board representative explained that the board has put significant effort into developing these standards, which are in keeping with state law and existing national model standards. Committee members raised questions about what types of medications could be administered, provided, or prescribed without a doctor's physical presence. Committee members also questioned whether pursuing this rulemaking is appropriate in light of ongoing litigation regarding the board's rules of telemedicine abortion. The board representative explained that these rules are separate from and can function independently from the rules being litigated. Committee members and the public also voiced concerns about potential issues arising during emergencies, such as what type of care a nonphysician could provide during an emergency and whether someone could jeopardize their license by taking certain actions in response to an emergency. A group representing physician assistants opposed the rule because it would conflict with existing rules regarding physician supervision of physician assistants, thus confusing practitioners. The board representative indicated these concerns are similar to other "scope of practice" questions regarding what needs to be done by a physician and what can be delegated to others.

**Action.** No action taken.

**REVENUE DEPARTMENT, *Multiresidential Property Tax Classification*, 12/10/14 IAB, ARC 1765C, ADOPTED.**

**Background.** This rulemaking implements new Iowa Code section 441.21, subsection 13, which was enacted by 2013 Iowa Acts, SF 295, which took effect January 1, 2015. SF 295 created a new classification of property for property taxation purposes called "multiresidential." The rulemaking sets out the multiresidential property tax classification and provides for the determination of aggregate actual values of multiresidential real estate, is the valuation and assessment of property classified as multiresidential, and the valuation and assessment of property with a dual classification.

**Commentary.** A department representative stated that the department received much public comment on the rulemaking, largely from local governments asserting that it would negatively affect their budgets. The representative explained that the rulemaking would affect only a small proportion of properties in the state, although some cities might be significantly affected, depending on the types of property they contain. She stated that the department has sought to implement SF 295 as written and as intended and is willing to assist in any further legislative action on the matter during the 2015 Legislative Session.

Committee members stated that some legislators who voted on the legislation in 2013 believed SF 295 required that each portion of a multiresidential property would be taxed according to its use, instead of the whole property being taxed according to its primary use, as the rulemaking requires. Committee members questioned whether the legislation required that two otherwise identical businesses would be taxed differently because one of them shares a building with apartments. The representative responded that the department believes its approach is what the legislation requires.

Committee members and the agency representative agreed that a statutory change would likely be necessary to resolve the issue.

Committee members asked if a property owner has a remedy if the owner disagrees with a local assessor's decision regarding a property's primary use. The representative explained that an owner can appeal to a local board of review, and then to the Property Assessment Appeal Board or district court.

**Action.** No action taken.

**Next Meeting. NOTE DATE CHANGE.** The next committee meeting will be held in Statehouse Room 116, on **Friday, February 6, 2015**, beginning at 9:00 a.m.

*Secretary ex officio:* Stephanie Hoff, Administrative Code Editor, (515) 281-3355.

*LSA Staff:* Jack Ewing, LSA Counsel, (515) 281-6048; Tim Reilly, LSA Counsel, (515) 725-7354.

Internet Page: <https://www.legis.iowa.gov/committees/committee?groupID=705>

---

## **ADMINISTRATIVE RULES REVIEW COMMITTEE**

December 12, 2014

**Chairperson:** Senator Wally Horn

**Vice Chairperson:** Representative Dawn Pettengill

**EMERGENCY RULE FILING REVIEWS.** Iowa Code section 17A.4(3) provides that an agency can adopt a rule without notice only with specific statutory authority or with prior approval by the Administrative Rules Review Committee. Under this procedure, the committee reviews requests by agencies to adopt rules filed without notice at its monthly meeting or at special meetings if necessary. The committee will approve such filings if the committee finds good cause that notice and public participation would be unnecessary, impracticable, or contrary to the public interest.

The committee considered one filing:

- **Economic Development Authority—Economic Development Region Initiatives, Chapter 31. EMERGENCY FILING APPROVED BY COMMITTEE.**

**EDUCATION DEPARTMENT, School Bus Driver's Authorization—Physical Fitness, 10/15/14 IAB, ARC 1661C, ADOPTED, 70-DAY DELAY.**

**Background.** Current rules require that school bus drivers pass an annual physical examination performed by a licensed physician, chiropractic physician, licensed physician assistant, or advanced registered nurse practitioner. This revision eliminates this list and instead refers to a "certified medical examiner" listed on the National Registry of Certified Medical Examiners.

At the committee's November meeting, members questioned the need for a federally issued certificate to perform a physical examination; members felt that Iowa licensure ensured adequate competency. Members understood this was a federal requirement but enquired about the consequences if Iowa did not implement this mandate. Department representatives were unsure of the possible federal responses and agreed to research this question. The committee voted to delay the rule for 70 days to allow time for further study.

**Commentary.** Department representatives stated that Iowa Code section 321.375(1)(d), which provides standards for qualifications for school bus drivers, has been interpreted to require adoption of this federal standard. The representatives explained that the federal regulation only applies to drivers contracted with a school district, not drivers who are directly employed by a district, and only when such drivers cross state lines to transport students to or from extracurricular activities. They also explained that the department believes the federal standard would provide more safety for students, and that it is inappropriate to have multiple standards for school bus driver physicals, so the department will apply it to all Iowa school bus drivers.

Committee members asked what consequences there would be for failing to implement the federal regulation, and the representatives stated that \$37 million in federal funding could potentially be jeopardized. Committee members asked if there is any difference between the physical currently required under state law and the one required by the federal regulation. The representatives explained that the physical is the same; the only difference is which medical professionals are qualified to give the physical. Committee members asked how many bus drivers would be affected by this rule and how many would be affected by the federal requirement for drivers who cross state lines for extracurricular activities. The representatives were unsure how many bus drivers would be affected.

Committee members questioned whether and to what extent federal regulations actually require adoption of this policy for Iowa school bus drivers, whether the department's interpretation of state law is correct, and whether requiring additional certification for medical professionals to complete these physicals is necessary or appropriate. Committee members voted to delay the effective date of this filing until the adjournment of the 2015 Session of the General Assembly. The filing will automatically go into effect upon adjournment if the General Assembly does not take action relating to it.

**Action.** Session delay.

**EDUCATIONAL EXAMINERS BOARD, *Substitute Authorization—Elementary Classroom, 11/12/14 IAB, ARC 1720C, ADOPTED.***

**Background.** This rulemaking expands the authority of the board's substitute authorization for substitute teachers to include the elementary classroom. Currently, the substitute authorization is only available for secondary classrooms. A substitute authorization provides an individual limited authority to act as a substitute teacher in a classroom for no more than five consecutive days and no more than 10 days in a 30-day period in one job assignment for a regularly assigned teacher who is absent. To obtain the substitute authorization, an applicant must hold a bachelor's degree. The applicant must also pass a background check and complete a minimum of 15 hours of coursework in classroom management, strategies for learning, diversity, and ethics.

**Commentary.** A board representative explained that the board had conducted a survey of school districts regarding the proposal, which received 165 responses, mostly from rural districts and mostly supportive. Committee members requested that the board provide the survey responses to the committee. Committee members questioned what the board's authority is for proposing the rule, and the representative explained that the board generally has authority to establish and set criteria for licenses and authorizations.

Public comment was heard in opposition to the rule, suggesting that allowing such a substitute to serve in an elementary setting, where the person would instruct the same students for an entire school day, as opposed to the high school setting, where students only receive instruction for a period at a time, is inappropriate, and that more effective alternatives to this proposal are available.

**Action.** No action taken.

**EDUCATIONAL EXAMINERS BOARD, *Activities Administration Authorization, 11/12/14 IAB, ARC 1718C, ADOPTED.***

**Background.** This filing allows an individual with a degree in athletic administration or a related field to serve in the role of an activities director if the individual meets the requirements for an activities administration authorization. Currently, an individual must have a teaching or administrative license to hold this position.

**Commentary.** Committee members questioned what the board's authority is for proposing a rule allowing a person who is not a teacher to carry out this function, and the representative explained that the board generally has authority to establish and set criteria for licenses and authorizations. Committee members questioned whether the rule would result in persons who are not teachers supervising teachers. The representative explained that would not occur, as the authorization only applies to activities such as coaching and sponsoring a student club. Committee members asked the board to provide the committee with a list of all functions for which the board currently provides authorizations.

Public comment was heard in opposition to the rule, arguing that only teachers should carry out these functions. Public comment was heard in support of the rule, arguing that the rule would help schools that have trouble finding coaches and stating that school athletic directors are supportive of the rule.

**Action.** No action taken.

**IOWA FINANCE AUTHORITY, *Program Fees, 11/12/14 IAB, ARC 1724C, NOTICE.***

**Background.** This rulemaking generally relates to mortgage credit certificates. At issue in this notice of intended action is whether a fee charged as part of a regulatory program is a rule which must be adopted through the rulemaking process. Iowa Code section 17A.2(11)(g) excludes from the definition of a "rule" the "specification of the prices to be charged for goods or services sold by an agency as distinguished from a license fee, application fee, or other fees." Although not specifically stated, this statutory provision implies that a fee is a rule.

**Commentary.** The current rule specifies a \$100 participation fee. That specific amount is being removed from the rule itself and will be published on the Authorities' Web site. Normally government fees are part of an overall regulatory scheme, e.g.: licensing fees, and must be set out as part of the rule. Unlike a price charged for a good or service, a fee is a part of a regulatory program and must be paid to participate in that program.

In this situation, the committee determined that the fee is part of a commercial, not a regulatory program. Lenders are not required to participate in the Mortgage Credit Certificate program; it is a voluntary business transaction. Therefore, the committee did not find the removal of the fee amount from the rule to be problematic.

**Action.** No action taken.

**PROFESSIONAL LICENSURE DIVISION, *Physician Assistants—On-site Visits by Supervising Physician, 11/26/14 IAB, ARC 1741C, NOTICE.***

**Background.** Physician assistants may work in remote clinics under the indirect supervision of a physician. The Board of Physician Assistants establishes by rule the details of the required supervision. This rulemaking removes the requirement that a physician assistant who is practicing in a remote medical site must have a supervising physician physically visit and practice at the remote medical site at least every two weeks.

**Commentary.** The board representative stated that a federal requirement that a physician be physically on site in a rural

health clinic every two weeks was removed. The representative also stated that compared to the site visitation requirements of surrounding states, Iowa's requirement is the most restrictive. The representative stated that modern technology has enhanced the levels of communication and supervision between the physician and the assistant; the physician assistant and the supervising physician must meet on a regular basis as they deem appropriate. It was noted that both the supervising physician and the physician assistant are responsible for the quality of care. Supporters of the rule emphasized the team approach used by physician assistants and the supervising physicians, and the success of that approach in delivering patient care.

Groups representing physicians and the Board of Medicine opposed the rule. Opponents noted that the two week visit requirement was the last specific requirement on supervision. Opponents supported the continuance of the current supervision requirements.

**Action.** No action taken.

**Next Meeting. NOTE DATE CHANGE.** The next committee meeting will be held in Statehouse Room 116, on **Tuesday, January 6, 2015**, beginning at **9:30 a.m.**

*Secretary ex officio:* Stephanie Hoff, Administrative Code Editor, (515) 281-3355

*LSA Staff:* Joe Royce, LSA Counsel, (515) 281-3084; Jack Ewing, LSA Counsel, (515) 281-6048.

Internet Page: <https://www.legis.iowa.gov/committees/committee?endYear=2014&groupID=705>

---

## **ADMINISTRATIVE RULES REVIEW COMMITTEE**

November 18, 2014

**Chairperson:** Senator Wally Horn

**Vice Chairperson:** Representative Dawn Pettengill

### **MEDICINE BOARD, *Standards of Practice*, 10/29/14 IAB, ARC 1708C, NOTICE.**

**Background.** The board proposes a practice standard relating to pain management requiring physicians who prescribe controlled substances for pain management to discuss with patients how the medication and the patient's own medical conditions may affect their ability to safely operate a vehicle. The rules are based on recommendations by the federal Transportation Safety Board.

**Commentary.** The board representative stated that the board used to issue informal policy statements, until the Attorney General's Office informed the board that such informal statements should be adopted through the rulemaking process. Committee members discussed the obligation imposed on physicians by the rule. Members expressed concern that this standard could lead to an increase in malpractice suits, where a physician could be held liable for damages when a patient is involved in an accident.

**Action.** No action taken. Further review on final adoption.

### **EDUCATION DEPARTMENT, *School Bus Drivers — Physical Fitness*, 10/15/14 IAB, ARC 1661C, ADOPTED.**

**Background.** Current rules require that school bus drivers pass an annual physical examination performed by a licensed physician, chiropractic physician, licensed physician assistant, or advanced registered nurse practitioner. This revision eliminates this list and instead refers to a "certified medical examiner" listed on the National Registry of Certified Medical Examiners.

**Commentary.** Committee members questioned the need for a federally issued certificate to perform a physical examination; members felt that Iowa licensure ensured adequate competency. Members understood this was a federal requirement but enquired about the consequences if Iowa did not implement this mandate. Department representatives were unsure of the possible federal responses and agreed to research this question.

**Action.** Seventy-day delay, further review at the committee's December 12 meeting.

### **EDUCATION DEPARTMENT, *Adult Education and Literacy Programs*, 10/15/14 IAB, ARC 1672C, NOTICE.**

**Background.** This filing provides for statewide standards and guidance for adult education and literacy programs and defines the requirements for statewide planning, program administration, use of funding, career pathways, student eligibility, qualifications of staff, professional development, and performance and accountability.

**Commentary.** Committee members questioned why the department pursued this rulemaking now, and a department representative explained that the creation of a dedicated funding stream for adult education in the Iowa Skilled Worker and Job Creation Fund led to the rulemaking to implement these programs. Members questioned how the department

defines “adult” in this context, which the representative explained is a person 16 years of age or older who is no longer attending an elementary or secondary (K-12) school. In response to another question, the representative explained that federal law was cited in the definition of “adult education and literacy program” to ensure reasonable limitations are in place on what might be considered adult education. Members asked for a list of stakeholders who were consulted in the drafting of the rulemaking, which was subsequently provided to the committee.

**Action.** No action taken.

**VOTER REGISTRATION COMMISSION, *Use of Electronic Signature on Online Voter Registration Transactions Via Iowa Department of Transportation's Internet Site, 10/15/14 IAB, ARC 1679C, NOTICE.***

**Background.** This rulemaking permits electronic signatures on file with the Iowa Department of Transportation (DOT) to be used on subsequent online voter registration transactions conducted via the DOT's Internet site.

**Commentary.** Commission representatives explained that this new feature came about because the commission was able to integrate it seamlessly with the DOT's existing electronic infrastructure. They stated that 94 percent of the public will be able to use the new feature. However, it is only meant as a supplement to existing registration processes, not a replacement. They noted that all data involved is maintained in a secure manner and that other states have implemented similar programs.

Committee members suggested the commission look for ways to ensure the veracity of the signatures over time and to expand this feature to other forms of state-issued identification.

**Action.** No action taken.

**Next Meeting. TIME AND LOCATION CHANGE.** The next committee meeting will be held in Statehouse Room 22, located behind the Senate Chamber, on **Friday, December 12, 2014**, beginning at 9:00 a.m.

*Secretary ex officio:* Stephanie Hoff, Administrative Code Editor, (515) 281-3355

*LSA Staff:* Joe Royce, LSA Counsel, (515) 281-3084; Jack Ewing, LSA Counsel, (515) 281-6048.

Internet Page: <https://www.legis.iowa.gov/committees/committee?endYear=2014&groupID=705>

---

**ADMINISTRATIVE RULES REVIEW COMMITTEE**

October 14, 2014

**Chairperson:** Senator Wally Horn

**Vice Chairperson:** Representative Dawn Pettengill

**SECRETARY OF STATE, *Emergency Rulemaking Filings: Technical and Editorial Corrections.***

**Background.** Iowa Code §17A.4(3)(a) requires that the committee approve “emergency” rule filings if the committee finds good cause that notice and public participation would be unnecessary, impracticable, or contrary to the public interest.

**Commentary.** In this review the Secretary of State proposed a variety of editorial and nonsubstantive revisions to election forms and instructions. Members questioned the need to adopt a rule without notice simply because it was nonsubstantive; members noted there was no actual need to have the rule in immediate effect.

**Action.** Emergency filing not approved.

**ECONOMIC DEVELOPMENT AUTHORITY, *Economic Development Region Initiatives, 09/17/14 IAB, ARC 1628C, ADOPTED.***

**Background.** Iowa Code §15E.351 requires the authority to establish and administer a business accelerator program.

**Commentary.** Amendments to the existing rules stated that the authority “may” establish an accelerator program. Committee members were concerned this change implied that the program was discretionary, instead of a mandate. The committee imposed a 70-day delay on this filing to allow for additional study.

**Action.** Seventy-day delay, further review at the committee's November 18 meeting.

**ENVIRONMENTAL PROTECTION COMMISSION, *Animal Feeding Operations—NPDES Compliance, 09/17/14 IAB, ARC 1627C, ADOPTED.***

**Background.** This rulemaking implements the Work Plan Agreement (Work Plan) entered into between the Department of Natural Resources (DNR) and the federal Environmental Protection Agency (EPA) on September 11, 2013, relating to state enforcement of National Pollutant Discharge Elimination System (NPDES) standards for concentrated animal feeding operations (CAFOs). A CAFO is an animal feeding operation that confines animals for more than 45 days during

a growing season, is located in an area that does not produce vegetation, and meets certain size thresholds set out in federal rules. Iowa Code §459.311 provides that CAFOs must comply with applicable NPDES permit requirements. The owner or operator of a CAFO must obtain an NPDES permit if the CAFO is designed, constructed, operated, or maintained such that a discharge will occur. Pursuant to Iowa Code §459.311(2), state rules implementing the NPDES permitting requirements “shall be no more stringent” than the requirements set out in EPA rules. The Work Plan requires that the DNR recommend to the Environmental Protection Commission (EPC) the adoption of certain rules, including the adoption by reference of “federal regulations necessary to fully implement the NPDES permitting program for confinement CAFOs that discharge to waters of the U.S.” Therefore, the EPC has adopted a rule that incorporates by reference the EPA’s CAFO regulation.

In addition, the amendments incorporate the Work Plan requirement that the DNR recommend to the EPC that it “adopt by reference federal regulations that fully implement the NPDES permitting program with respect to land application setback and separation distances for open feedlot CAFOs.” To ensure equivalency with the open feedlot program, the EPC has amended this setback requirement for confinement feeding operations as well.

The EPC also rescinded the outdated term “operation permit” from the confinement feeding operation rules. The amendments eliminate the need for operation permits in the confinement animal feeding operation program. The rulemaking includes other conforming changes as well.

By letter dated January 23, 2014, U.S. EPA Region 7 informed the DNR that the amendments “meet the requirements ... of the Work Plan and ensure that Iowa’s NPDES authorities are consistent with federal requirements.”

**Commentary.** An EPC representative explained the rulemaking and noted that it satisfies the statutory requirements that the state comply with federal NPDES permitting requirements, but not exceed them, and that the EPA has agreed to this proposal.

The committee heard public comment from approximately a dozen speakers in opposition to the rulemaking. Speakers asserted that DNR has inadequately enforced NPDES standards for CAFOs in the past and that the rulemaking is similarly inadequate. Speakers asked for a variety of changes they asserted would strengthen the rulemaking, including increased inspections, on-site inspections, increased fines for violations, a publicly available database of violations, requiring NPDES permits for all CAFOs, and increased penalties for habitual violators. Speakers also urged that the law requiring that state NPDES permitting requirements be no more stringent than EPA requirements be amended, arguing that federal EPA standards were not meant to serve as a ceiling for state standards.

The DNR Director then spoke in support of the rulemaking. He explained that the rulemaking was the result of negotiation with the EPA, with input received from all stakeholders. The negotiations began in light of a petition filed with the EPA that sought the EPA’s takeover of enforcement of the state’s NPDES program. The Work Plan implemented by this rulemaking was agreed to as an alternative. He noted that the DNR had requested additional inspectors to implement the plan and has been able to hire seven additional inspectors. He explained how the DNR uses technology to conduct inspections without going on site. He also explained that the DNR is in regular contact with the Attorney General’s Office regarding the NPDES program and refers cases to it for enforcement action.

**Action.** No action taken.

**HUMAN SERVICES DEPARTMENT, *Child Development Homes—Emergency Contact Records*, 10/01/14 IAB, ARC 1636C, ADOPTED.**

**Background.** This rulemaking requires that child development home providers have readily accessible accurate emergency contact information regarding the children in their care.

Presently, there are no administrative rules that require providers to have a paper copy of emergency contact information, nor is there a clear requirement in the case of information saved in a mobile device. Therefore, regarding information saved in a mobile device, the emergency contact information may not be appropriately accessible to those who need it.

**Commentary.** Committee members expressed concern that the rulemaking as drafted could lead to the Department of Human Services (DHS) searching providers’ mobile devices during inspections to ensure the content requirements for such devices are met. A DHS representative explained that the mobile device requirements in the rulemaking are less stringent than current requirements, that DHS would seek to enforce the mobile device requirements in a balanced way, and that DHS may only search mobile devices if deficiencies in emergency contact information are encountered repeatedly. The representative agreed with committee members that the language in the rulemaking may need further review. A motion was made for a 70-day delay of the effective date of the rulemaking to allow for such review. The motion carried.

**Action.** Seventy-day delay.

**HUMAN SERVICES DEPARTMENT, *Emergency Plans*, SPECIAL REVIEW.**

**Background.** The committee held a special review of 441 IAC 109.10(15), which requires that child care centers have written plans for responding to various emergency situations including fire, tornadoes, floods, intruders, and missing children. The plans must include information on transporting children, notifying parents, telephone numbers, building diagrams, and other matters. Certain information in the plan must be visibly posted by all program and outdoor exits. The

rule also includes training and practice requirements.

**Commentary.** At issue was the requirement that child care centers post building diagrams for use during emergency situations. Schools are sometimes also used as child care centers, and the Department of Education (DE) prohibits the posting of building diagrams as required by the rule. Committee members inquired how the conflict among these requirements could be resolved.

A DHS representative explained that DHS was not aware of this conflict. DHS works with the State Fire Marshal to develop the emergency plan requirements for child care centers, and the posting requirement is one part of that process. The representative stated that DHS would work with DE, the State Fire Marshal, and members of the law enforcement community to resolve the conflict. Resolution is expected within approximately three months.

**Action.** No action taken.

**Next Meeting.** The next committee meeting will be held in Statehouse Room 116, on **Tuesday, November 18, 2014**, beginning at 9:00 a.m.

*Secretary ex officio:* Stephanie Hoff, Administrative Code Editor, (515) 281-3355

*LSA Staff:* Joe Royce, LSA Counsel, (515) 281-3084; Jack Ewing, LSA Counsel, (515) 281-6048.

Internet Page: <https://www.legis.iowa.gov/committees/committee?endYear=2014&groupID=705>

---

## **ADMINISTRATIVE RULES REVIEW COMMITTEE**

September 9, 2014

**Chairperson:** Senator Wally Horn

**Vice Chairperson:** Representative Dawn Pettengill

### **ADMINISTRATIVE SERVICES DEPARTMENT, *Merit System Employees, 08/06/14 IAB, ARC 1568C, ADOPTED.***

**Background.** These provisions were initially reviewed by the committee in July. The filing contains a variety of changes relating to personnel matters; only item 22 of this filing was at issue. Item 22 strikes the following language in subrule 11-60.3(2):

~~e. An agency shall not implement a reduction in force until it has first terminated all temporary employees in the same class in the reduction in force unit, as well as those who have probationary status in the same class.~~

The change will end the current protection provided to merit-protected employees.

**Commentary.** Item 22 of this filing was the primary focus of committee discussion, both as a notice and as an adopted filing. Department representatives stated the revision of the current provision is similar to the provisions of a major collective bargaining agreement. Agency representatives stated the change was intended to provide consistency in policy between merit positions and contract positions; the representatives agreed to provide a copy of this agreement to the committee members. This change provides the appointing authority flexibility in determining layoffs; the representatives noted in actual practice permanent employees had not been laid off prior to temporary employees.

Committee members questioned whether it is necessary for merit rules to mirror a union contract and whether there is good reason to retain a temporary employee, for a limited time, over a merit-covered permanent employee.

**Action.** No action taken.

### **EDUCATIONAL EXAMINERS BOARD, *Montessori Authorization, 09/03/14 IAB, ARC 1603C, NOTICE.***

**Background.** Most Montessori programs (an early childhood education program based on a European approach) in the state are independently operated; this proposal would create a voluntary authorization allowing recognition of specialized Montessori training and coverage of these employees under the board's code of professional conduct and ethics. The credential would not by itself authorize the individual to teach in the public schools.

**Commentary.** These provisions were requested by Montessori professionals. The goal is to create a credential that newly trained Montessori professionals could use as evidence of competence, and also as a way of ensuring properly trained professionals in the independent schools. Committee members questioned why a voluntary credential is necessary or desirable. The board representative stated that the credential would subject the holder to the board's code of ethics; no other mechanism is available to prevent a violator from continuing to teach in another school.

**Action.** No action taken.

### **EDUCATIONAL EXAMINERS BOARD, *Special Education Endorsements, 09/03/14 IAB, ARC 1602C, NOTICE.***

**Background.** Under the proposed amendments, the K-12 special education endorsement would replace the current instructional strategist I and II endorsements. The K-12 special education endorsement increases specific preparation requirements of special education teachers (both in general education and special education preparation), addresses the noncategorical delivery models of special education, and includes coverage of Iowa's specific special education issues and practices. The proposal was developed by a committee of stakeholders that met to examine possible changes to the

existing special education endorsements.

**Commentary.** Committee members questioned whether the rulemaking amounts to lowering the standards for a special education endorsement and whether the motivation behind the proposal is to benefit students or merely to mitigate scheduling and administrative concerns. A board representative disagreed that the proposal lowers standards in any way and stated that it in fact increases standards and better serves students by more closely matching endorsement holders with students whom they are actually qualified to teach. Members also questioned the effect this proposal would have on teacher preparatory programs, and the representative explained that it would probably amount to an increase in preparatory standards and the number of hours necessary to qualify for the endorsement. Some members questioned whether raising the standards for this endorsement is appropriate in light of the state's shortage of special education teachers. The representative replied that the main concern the board is responding to is teachers who might not have the correct preparation for the students they will be teaching.

Public comment was heard from several stakeholders who had concerns similar to committee members: that the proposal is centered more on the needs of administrators rather than students; that it will make it harder for those in teacher preparation programs to qualify for the endorsement in the standard four years, and thus make the endorsement less attractive to teacher candidates; and that better alternatives are available. A member of the stakeholder group defended the proposal, stating the needs of students, not teacher preparation programs, should be paramount, and that these new standards will result in smarter, better-rounded special education teachers.

**Action.** No action taken.

#### **EDUCATIONAL EXAMINERS BOARD, *Activities Administration Authorization, 09/03/14 IAB, ARC 1605C, NOTICE.***

**Background.** The proposed amendment would allow an individual with a degree in athletic administration or a related field to serve in the role of an activities director if the individual meets the requirements for an activities administration authorization. Currently, an individual must have a teaching or administrative license to hold this position.

**Commentary.** Committee members questioned why this new authorization is necessary, and a board representative explained that it will allow a person to serve as an athletic director who is not a teacher, if they have a relevant degree, such as in sports administration, and meet other requirements. The representative noted that the proposal was requested by schools and the Iowa High School Athletic Association. The representative was unsure if there is a shortage of athletic directors in this state.

Public comment in support of the proposal was received from a person with an extensive background in athletics, including a master's degree, who satisfies the qualifications to be an athletic director on the college level, but not the high school level, who would benefit from the proposal. Public comment was also received from an athletic director who oversees required training for high school athletic directors who supported the proposal and emphasized the importance of such training in promoting safety in high school athletics.

**Action.** No action taken.

#### **PUBLIC HEALTH DEPARTMENT, *Medical Cannabidiol, 08/06/14 IAB, ARC 1571C, NOTICE.***

**Background.** 2014 Iowa Acts, SF 2360, establishes new Iowa Code chapter 124D, the "Medical Cannabidiol Act," to allow for the medical use of a certain type of marijuana derivative for alleviating symptoms caused by intractable epilepsy. A neurologist who has physically examined and treated a patient suffering from intractable epilepsy may provide a written recommendation for the patient's medical use of cannabidiol to treat or alleviate symptoms of intractable epilepsy if there are no other satisfactory treatment options.

"Cannabidiol" is a nonpsychoactive preparation that has a tetrahydrocannabinol level of no more than 3 percent. "Intractable epilepsy" is an epileptic seizure disorder for which standard medical treatment does not prevent or significantly ameliorate recurring, uncontrolled seizures or for which standard medical treatment results in harmful side effects.

The Department of Public Health authorizes a picture ID registration card issued by the Department of Transportation; this registration file is confidential and must be annually renewed.

The substance of the program is detailed in the Act itself; the rules set out the procedural steps to authorize registration.

**Commentary.** A department representative explained the rulemaking and noted that most of the public comment received by the department regarded proposed changes to the underlying legislation. She also described changes that would be made before the rulemaking is adopted, such as to the definition of "permanent resident" and to the renewal process, and she provided copies of the final rule.

Committee members suggested several changes to the proposal, including clarifying whether a primary caregiver must be in-state, voiding registration cards if they are reported lost, and sunseting the rule to match the sunset in SF 2360. Public comment was heard from several persons whose children will benefit from the proposal. They expressed appreciation for the department's efforts, but still urged further revisions. They suggested further use of electronic components in the application and renewal process, an opportunity to correct errors in required documentation, an expedited renewal process, and a timeframe set out for departmental response to applications. The department representative explained that the department will work with applicants to correct errors in their applications, and may further refine the renewal

process before the first renewals occur, but lacks funding to pursue further improvements such as electronic augmentation of the application and renewal processes. Committee members asked how many people would benefit from the legislation, and a public commenter explained that it would be very few, as the only state where lowans can legally access cannabidiol is Oregon, which still has its own legal requirements that must be satisfied.

**Action.** No action taken.

**PUBLIC EMPLOYMENT RELATIONS BOARD, *Electronic Document Management System*, 08/20/14 IAB, ARC 1583C, ADOPTED.**

**Background.** This filing was initially reviewed by the committee in July; it implements 2014 Iowa Acts, HF 2172; that Act provides for the use of an electronic filing and notice system by the board.

**Commentary.** The filing contains rules that govern the use of the new system and are modeled in substantial part on the Iowa Court Rules pertaining to the use of the judicial branch electronic document management system. The provisions include definitions, the registration process for the system, standards for mandatory electric filing and exceptions to the standards, standards for service of documents, and other matters.

**Action.** No action taken.

**REVENUE DEPARTMENT, *Multiresidential Property Tax Classification*, 08/20/14 IAB, ARC 1593C, NOTICE.**

**Background.** This rulemaking implements new Iowa Code subsection 441.21(13) which was enacted by 2013 Iowa Acts, SF 295, the property tax reform bill, and which takes effect January 1, 2015. SF 295 created a new classification of property for property taxation purposes called “multiresidential.” The rulemaking sets out the multiresidential property tax classification and provides for the determination of aggregate actual values of multiresidential real estate, the valuation and assessment of property classified as multiresidential, and the valuation and assessment of property with a dual classification of multiresidential and another classification.

**Commentary.** A department representative explained the rulemaking and noted that the department is aware that its interpretation of the legislation has caused some controversy, that it has consulted with stakeholders and the Attorney General’s Office, and that it welcomes further guidance from the Legislature.

Discussion centered around what kinds of property will qualify for the multiresidential classification under the legislation. The department representative explained that some believe any property with both commercial and residential uses should qualify, while others feel the determination should be based on primary use. The department agrees with the latter interpretation, which the representative explained will result in decreased revenue for local governments. The representative confirmed that there is no definition of “primary use” in the Iowa Code; there are three different ways that primary use can be calculated, depending on the location of the property. The representative also stated that the issues raised about the rulemaking would require legislation to resolve.

Public comment was heard from stakeholders who stated that the lack of a definition of “primary use” is problematic and agreed that further legislation may be necessary.

The department plans to file an amended notice of intended action to provide for a public hearing on the rulemaking.

**Action.** No action taken.

**Next Meeting.** The next committee meeting will be held in Statehouse Room 116, on Tuesday, October 14, 2014, beginning at 9:00 a.m.

*Secretary ex officio:* Stephanie Hoff, Administrative Code Editor, (515) 281-3355

*LSA Staff:* Joe Royce, LSA Counsel, (515) 281-3084; Jack Ewing, LSA Counsel, (515) 281-6048.

Internet Page: <https://www.legis.iowa.gov/committees/committee?endYear=2014&groupID=705>

---

**ADMINISTRATIVE RULES REVIEW COMMITTEE**

August 5, 2014

**Chairperson:** Senator Wally Horn

**Vice Chairperson:** Representative Dawn Pettengill

**EMERGENCY RULE FILING REVIEWS.** Iowa Code §17A.4(3), (2013 Iowa Acts, ch 114 (HF 586)), provides that an agency can adopt a rule without notice only with specific statutory authority or with prior approval by the Administrative Rules Review Committee (ARRC). Under this procedure, the committee reviews requests by agencies to adopt rules filed emergency without notice at its monthly meeting or at special meetings if necessary.

The committee considered two rulings:

- **Iowa Finance Authority**—Military Service Member Home Ownership Assistance Program, Chapter 27. EMERGENCY FILING APPROVED BY COMMITTEE.
- **Economic Development Authority**—STEM internship program, new Chapter 110. EMERGENCY FILING

DECLINED BY COMMITTEE.

**EDUCATIONAL EXAMINERS BOARD, Substitute Authorization—Elementary Classroom, 07/23/14 IAB, ARC 1552C, NOTICE.**

**Background.** This rulemaking expands the authority of the board's substitute authorization for substitute teachers to include the elementary classroom. Currently, the substitute authorization is only available for secondary classrooms. A substitute authorization provides an individual limited authority to act as a substitute teacher in a classroom for no more than 5 consecutive days and no more than 10 days in a 30-day period in one job assignment for a regularly assigned teacher who is absent. To obtain the substitute authorization, an applicant must hold a bachelor's degree. The applicant must also pass a background check and complete a minimum of 15 hours of coursework in classroom management, strategies for learning, diversity, and ethics.

**Commentary.** Committee members questioned the need for this rulemaking, asking whether there is a shortage of elementary substitutes and suggesting the rulemaking could have a negative effect on wage levels for substitutes. A board representative explained that the board has heard from school superintendents that finding qualified elementary substitutes has become more difficult of late. The representative also stated that Iowa's current limitations on elementary substitutes are unique across the nation. Public comment was heard from a representative of the Iowa State Education Association expressing concern about the impact on student learning if elementary students are taught by noncertified substitutes for significant periods of time over the course of a school year.

**Action.** No action taken.

**EDUCATION DEPARTMENT, School Bus Driver's Authorization—Physical Fitness, 07/09/14 IAB, ARC 1528C, NOTICE.**

**Background.** This rulemaking conforms state standards on pupil transportation for school districts and accredited nonpublic schools to a new federal regulation by providing that an applicant for a school bus driver's authorization undergo a biennial physical examination by a certified medical examiner who is listed on the National Registry of Certified Medical Examiners. Previously, the examination only needed to be conducted by a licensed physician or other medical professional.

**Commentary.** Committee members expressed concern that the training process necessary for a medical professional to obtain listing on the registry is lengthy, expensive, and burdensome. Members also questioned what would happen if an applicant cannot readily find a registered medical professional. A department representative explained that compliance with this federal regulation is mandatory and that truck drivers are already subject to a similar requirement. He noted that registered medical professionals are listed on the registry, and there are 31 medical professionals registered in Des Moines alone. He also explained that the examination does not check for mental health issues, as those are not covered by the federal or state standards at issue.

**Action.** No action taken.

**TRANSPORTATION DEPARTMENT, Driver Education—Parent Teaching, 07/09/14 IAB, ARC 1526C, NOTICE.**

**Background.** Iowa Code §321.178A was enacted in 2013; it allows a "teaching parent" to instruct a student in a driver education course approved by the department.

**Commentary.** Department representatives noted that the participating student must be under the custody and control of the teaching parent (parent, guardian, or custodian with a clean driving record). On completion of the training the teaching parent must deliver specified documentation to the department; this includes copies of tests, a log of classroom and driving hours (40 hours), and the name of the approved course used to provide the instruction.

These approved courses must come from vendors approved by the department. The department has requested responses to a request for information (RFI) from interested vendors; four responses have been received. Courses vary between the use of online content and textbooks. These courses must be commensurate with those offered in the school system.

The process culminates with the final driving test conducted by the department.

**Action.** No action taken.

**Next Meeting.** The next committee meeting will be held in Statehouse Room 116, on **Tuesday, September 9, 2014**, beginning at 9:00 a.m.

*Secretary ex officio:* Stephanie Hoff, Administrative Code Editor, (515) 281-3355.

*LSA Staff:* Joe Royce, LSA Counsel, (515) 281-3084; Jack Ewing, LSA Counsel, (515) 281-6048.

*Internet Page:* <https://www.legis.iowa.gov/committees/committee?endYear=2014&groupID=705>

**Chairperson:** Senator Wally Horn

**Vice Chairperson:** Representative Dawn Pettengill

**ADMINISTRATIVE SERVICES DEPARTMENT, *Merit System Employees, 06/11/13, IAB, ARC 1503C, NOTICE.***

**Background.** This notice of intended action sets out a variety of changes relating to personnel matters. Item 22 of this proposal strikes the following language:

~~e.—An agency shall not implement a reduction in force until it has first terminated all temporary employees in the same class in the reduction in force unit, as well as those who have probationary status in the same class.~~

The change will end the current protection provided to merit protected employees.

**Commentary.** Item 22 of this proposal was the primary focus of committee discussion. Department representatives stated the rescission of the current provision is similar to the provisions of a major collective bargaining agreement. Agency representatives stated the change is intended to provide consistency in policy between merit positions and contract positions; the representatives agreed to provide a copy of this agreement to the committee members. This change provides the appointing authority flexibility in determining layoffs; the representatives noted that merit-covered employees would still retain any “bumping” or recall rights. A member noted that traditionally, temporary employees are laid off before more experienced permanent employees. The agency representatives noted that temporary employees work less than 800 hours a year, making it unlikely they would be retained over permanent employees.

Committee members questioned whether it was necessary for merit rules to mirror a union contract and whether there was good reason to retain a temporary employee, for a limited time, over a merit-covered permanent employee.

**Action.** No action taken. Further review is likely in September when the notice is adopted in final form.

**EDUCATION DEPARTMENT, *Supplementary Weighting, 06/11/13, IAB, ARC 1486C, FILED EMERGENCY.***

**Background.** This emergency filing implements 2014 Iowa Acts, HF 2271 and SF 2056, which made significant changes to the state operational sharing law. In operational sharing, school districts share personnel in listed positions under the law and receive additional state payment for doing so.

**Commentary.** At its November 2013 meeting, the committee imposed a session delay on a prior rulemaking implementing 2013 Iowa Acts, Chapter 65 (HF 472), with the department’s consent, when questions arose as to whether that rulemaking was in keeping with legislative intent. The 2014 legislation, enacted in consultation with affected stakeholders, sought to resolve the dispute from 2013.

**Action.** No action taken.

**EDUCATION DEPARTMENT, *Athletic Eligibility for School Transfer—Bullying, SPECIAL ISSUE REVIEW.***

**Background.** Iowa Code §282.18(11) provides that a student who “open enrolls” in another school district is ineligible to participate in varsity interscholastic athletic contests and athletic competitions during the student’s first 90 school days of enrollment in the new district. In 2014, the House of Representatives considered legislation allowing continued athletic eligibility for a student who open enrolls due to an incident of harassment or bullying (HF2409, amendment H-8066).

**Commentary.** House File 2409 was not enacted, but commenters stated that the athletic eligibility amendment was well-received. It was noted that while Iowa Code §282.18(11) provides a series of exemptions from the ineligibility provisions, it would be unlawful to add another exemption by rule. Several members did not believe that relaxing the athletic eligibility provisions would resolve the bullying issue in any particular case; members stated that the reason for the student’s transfer could follow that student to the new school and allow the cycle of bullying to continue.

Members concluded this issue could not be resolved through rulemaking and should be addressed by the Legislature.

**Action.** This was an issue review, no rule has been proposed.

**PUBLIC EMPLOYMENT RELATIONS BOARD, *Electronic Document Management System, 06/25/13, IAB, ARC 1514C, NOTICE.***

**Background.** This notice of intended action implements 2014 Iowa Acts, HF 2172; that Act provides for the use of an electronic filing and notice system by the board.

**Commentary.** This notice contains rules that govern the use of the new system and are modeled in substantial part on the Iowa Court Rules pertaining to the use of the judicial branch electronic document management system. The proposal includes definitions, the registration process for the system, standards for mandatory electronic filing and exceptions thereto, standards for service of documents, and other matters.

**Action.** No action taken.

**Next Meeting.** The next committee meeting will be held in Statehouse Room 116, on Tuesday, August 12, 2014, beginning at 9:00 a.m.

*Secretary ex officio:* Stephanie Hoff, Administrative Code Editor, (515) 281-3355.

*LSA Staff:* Joe Royce, LSA Counsel, (515) 281-3084; Jack Ewing, LSA Counsel, (515) 281-6048.

*Internet Page:* <https://www.legis.iowa.gov/committees/committee?endYear=2014&groupID=705>

---

## **ADMINISTRATIVE RULES REVIEW COMMITTEE**

June 10, 2014

**Chairperson:** Senator Wally Horn

**Vice Chairperson:** Representative Dawn Pettengill

**EMERGENCY RULEMAKING REQUESTS**, Iowa Code §17A.4(3), (2013 Iowa Acts, ch 114 (HF 586)), provides that an agency can adopt a rule without notice only with specific statutory authority or with prior approval by the Administrative Rules Review Committee (ARRC). Under this procedure, the committee reviews requests by agencies to adopt rules filed emergency without notice at its monthly meeting or at special meetings if necessary.

The committee gave preapproval for five emergency filings:

### **HUMAN SERVICES DEPARTMENT**

- Expands state Child Care Assistance Program eligibility to allow a parent to work part time and go to school part time for at least 28 hours in the aggregate.
- Adds minimum foster group care payment rates.
- Changes reimbursement methodology for Community Mental Health Centers (CMHCs).
- Increases Emergency Medical Service Providers reimbursement rate.

### **WORKERS COMPENSATION DIVISION**

- Payroll tax tables

### **HUMAN SERVICES DEPARTMENT, Online Training for Brain Injury (BI) Waiver Providers, 04/30/13 IAB, ARC 1442C, ADOPTED.**

**Background.** This adopted rule revises current provisions requiring Medicaid home and community-based BI services waiver providers and each of their staff members involved in direct consumer service to have training regarding individuals who have a brain injury. The filing requires completion of a standardized training program. The training can be taken over the internet and is completed by an examination which is used only to determine what additional information the service provider might need; there is no passing grade required. Current provisions allowing for an on-the-job experience alternative are eliminated. The rule becomes effective July 1, 2014.

At the committee's May meeting, stakeholders and some committee members questioned whether the training requirements were too burdensome and whether they were necessary for all providers. Further review of the proposal was requested for the committee's June meeting.

**Commentary.** A department representative distributed a handout detailing changes that will be made to the training requirements in a subsequent rulemaking before the requirements become effective on January 1, 2015. The changes are in response to prior feedback received from committee members and stakeholders. These changes include a grandfathering provision, a 60-day period to complete the training, and a paper version of the training. Committee members and stakeholders expressed appreciation to the department for pursuing these changes.

**Action.** No action taken.

### **HUMAN SERVICES DEPARTMENT, CDAC—Legal Representatives, COURTESY REVIEW.**

**Background.** Administrative rules that went into effect January 1, 2014, prohibit legal representatives of Medicaid clients from being a paid provider of Medicaid-funded services. 2014 Iowa Acts, SF 2320, directed the department to adopt rules allowing legal representatives to be paid providers when providing services to members receiving individual consumer directed attendant care (CDAC) services or as an employee in the Consumer Choices Option (CCO) program. These amendments will allow a legal representative to be a paid provider of service when providing individual CDAC or CCO services to a member they legally represent. These amendments also set service delivery parameters for the legal representative when they are a paid provider, as required by SF 2320.

The committee reviewed this proposal prior to its filing as a notice of intended action. The notice of intended action will be subject to formal review at the committee's July meeting.

**Commentary.** A department representative reviewed the history of this issue, including a prior rulemaking that was terminated and subsequent legislative action in SF 2320.

Stakeholder comment was heard expressing concern about the implications of replacing "consumer-directed attendant care services" with "personal care services," as provided in SF 2320, and whether this change might lead to confusion. A department representative stated that the department would work with stakeholders in implementing this change to avoid

any negative effects.

**Action.** No action taken.

**NATURAL RESOURCE COMMISSION (NRC), Deer Hunting Season, 05/28/14 IAB, ARC 1475C, NOTICE.**

**Background.** Following a statewide survey, the NRC annually revises the deer season, including the numbers of licenses available in the various zones.

**Commentary.** These revisions reflect the results of the current survey, which revealed a decline in the deer population; the amendments eliminate the January antlerless-deer-only season, reduce antlerless deer quota numbers in 72 counties by 10,000 from 2013, and restrict hunters in 27 counties to taking only antlered deer during the early muzzleloader and first shotgun seasons. These rules are designed to reduce the rate of decline in deer numbers in those counties whose deer populations have already been reduced to levels that were agreed to in 2009 by the Deer Study Advisory Group. Special deer depredation and shooting permits are available for those "hot spots" where deer populations do pose a problem.

Committee members discussed the presence of chronic wasting disease in Iowa. One case has been reported; NRC officials were confident that their sampling methodology accurately measured the prevalence of this disease.

**Action.** No action taken.

**TREASURER OF STATE, Custodial Agreements, 05/14/14 IAB, ARC 1464C, ADOPTED.**

**Background.** Iowa law requires the Treasurer to adopt rules requiring the inclusion in public funds custodial agreements of any provisions necessary to prevent loss of public funds. The Treasurer, in consultation with the Attorney General, is required to adopt rules requiring that public funds custodial agreements contain "any provisions necessary" to prevent loss of public funds. These agreements include any contractual arrangement in which investment advisors or investment companies act as a custodian of public funds or any security.

**Commentary.** This filing updates the existing provisions. The rules were initially proposed in March. The Iowa Association of School Boards expressed concerns over the local impact of these amendments. For that reason the committee imposed a 70-day delay to allow the Treasurer's office an opportunity to meet with stakeholders and resolve the issues.

**Action.** 70-day delay; additional review in July or August 2014.

**Next Meeting.** The next committee meeting will be held in Statehouse Committee Room 22, on Tuesday, July 8, 2014, beginning at 9:00 a.m. Room 22 is located behind the Senate Chamber.

*Secretary ex officio:* Stephanie Hoff, Administrative Code Editor, (515) 281-3355.

*LSA Staff:* Joe Royce, LSA Counsel, (515) 281-3084; Jack Ewing, LSA Counsel, (515) 281-6048.

Internet Page: <https://www.legis.iowa.gov/committees/committee?groupID=705>

---

**ADMINISTRATIVE RULES REVIEW COMMITTEE**

May 13, 2014

**Chairperson:** Senator Wally Horn

**Vice Chairperson:** Representative Dawn Pettengill

**EMERGENCY RULEMAKING REQUESTS**, Iowa Code §17A.4(3), (2013 Iowa Acts, ch 114 (HF 586)), provides that an agency can adopt a rule without notice only with specific statutory authority or with prior approval by the Administrative Rules Review Committee (ARRC). Under this procedure, the committee reviews requests by agencies to adopt rules filed emergency without notice at its monthly meeting or at special meetings if necessary.

The committee gave preapproval for two emergency filings:

- **DEPARTMENT OF REVENUE**, Property Assessment Appeal Board, 71.21(421,17A).
- **EDUCATION DEPARTMENT**, Supplementary Weighting, ch 97.

**DEPARTMENT OF HUMAN SERVICES, Online Training for Brain Injury (BI) Waiver Providers, 04/30/14 IAB, ARC 1442C, ADOPTED.**

**Background.** This adopted rule revises current provisions requiring Medicaid home and community-based BI services waiver providers and each of their staff members involved in direct consumer service to have training regarding individuals who have a brain injury. This filing requires completion of a standardized training program. It can be taken over the internet and is completed by an examination which is used only to determine what additional information the

service provider might need; there is no passing grade required. Current provisions allowing for an on-the-job experience alternative are eliminated.

The rule becomes effective July 1, 2014.

**Commentary.** Department representatives and stakeholders emphasized that training requirements are already in place, stating the new requirements ensure standardized training.

Proponents of this change noted the need to update the current training program and the advantages of standardized training, available over the internet. Proponents stated that all service providers for brain injury clients require training to ensure they can properly assist the client. Opponents contended the new training is too detailed and demanding and will make it more difficult and expensive to attract care providers. Opponents also noted that many providers do not use or have access to the internet.

Some committee members questioned the need for this level of training for persons who provide basic housekeeping services and expressed concern that the requirement would make it more difficult to attract service providers. Other members supported the new training requirements.

**Action.** No action taken, further review on June 10 is anticipated.

#### **EDUCATION DEPARTMENT, Nutritional Content Standards, 04/30/14 IAB, ARC 1432C, ADOPTED.**

**Background.** These provisions were first adopted in 2009. That rule consists of a chart detailing school dietary standards, which include limitations on sodium, calories, fats and trans fat, sugar, and sports drinks. The standards for food and beverages in the federal rules are the minimum standards that local school districts are required to meet.

**Commentary.** This filing updates the existing provisions and retains the chart format. State agencies or local school districts may establish their own standards for non-program foods sold to children, as long as such standards are consistent with the federal standards.

**Action.** No action taken.

#### **STATE PUBLIC DEFENDER, Claims for Services, 04/30/13 IAB, ARC 1437C, NOTICE.**

**Background.** This proposal adds significant detail to existing rules for indigent defense contracts, and provides a number of safeguards to prevent improper billing. The noticed rules set a maximum number of aggregate hours that an attorney can bill in a day, require detailed itemized time and expense reimbursement records, establish additional documentation requirements for claims of attorneys whose contracts were canceled for improper billing practices, and clarify the prohibition on other improper practices.

The proposal clearly states that claims shall only be paid for services and expenses incurred within the scope of the court appointment, and only after the service is rendered; other fees or expenses claimed will be denied. All billed time must be the actual time worked providing services to the client; estimated billing is prohibited. Billable time is limited to 12 hours a day, except for a trial or hearing, where the maximum is 16 hours.

Under the existing rules, claims that are “not reasonable or not appropriate” will be denied. Under the proposal, such claims will be “reduced by the state public defender to an amount which is not excessive.”

Non-billable services include: clerical work, including photocopying; work performed to withdraw from a case; general overhead; and preparation document or petitions related to the attorney fee claim. Travel time and mileage costs directly related to representing the client are an allowable expense.

**Commentary.** The State Public Defender explained that these amendments were pursued after various improper billing practices were discovered, which led to nine indigent defense contracts being cancelled.

Committee members asked what will happen to attorneys whose contracts were cancelled. The State Public Defender explained that his office has the discretion to contract with them again, but noted one is facing criminal charges. Committee members asked if time spent complying with the billing process is an allowable expense; it is not. Committee members urged the State Public Defender to continue to pursue improvements and efficiencies in the billing process. He explained that his office is working on a standardized online claims submission system to streamline the process.

**Action.** No action taken.

**Next Meeting.** The next committee meeting will be held in Statehouse Room 116, on **Tuesday, June 10, 2014**, beginning at 9:00 a.m.

*Secretary ex officio:* Stephanie Hoff, Administrative Code Editor, (515) 281-3355.

*LSA Staff:* Joe Royce, LSA Counsel, (515) 281-3084; Jack Ewing, LSA Counsel, (515) 281-6048.

Internet Page: <https://www.legis.iowa.gov/committees/committee?groupID=705>